IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

LA.App..No. 671 of 2001()

LAR.314/1992 of SUB COURT, MAVELIKKARA
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APPELLANT:

1.B.N.THANKOMONEY, KALLITATHIL,
ERMAKUZHY MURI, PALAMEL VILLAGE.

2.K.SURESH KUMAR, -DO-

3.K.RAJESH KUMAR, -DO-

BY ADV. SRI. GEORGE VARGHESE PERUMPALLILKUTTIYIL
SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)

RESPONDENTS:

STATE OF KERALA, REP. BY THE DIST.COLLECTOR,
ALAPPUZHA.

BY GOVERNMENT PLEADER SMT.K.R.DEEPA.

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 11/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

L.A.A. NO.671 OF 2001

Dated 11th October, 2007.

J U D G M E N T

Harun-Ul-Rashid, J.

This is an appeal preferred by the claimants against the judgment and decree dated 17.6.2000 in LAR 314/92 on the file of the Sub Court, Mavelikkara. The extent acquired is 3.35 Ares of dry land in survey No.219/9-6 of Palamel village. The acquisition was for the purpose of Kallada Irrigation Project. Section 4(1) notification was published on 4.11.1975. The Land Acquisition Officer awarded Rs.730/- per Are towards the land value. The court below granted an enhancement at Rs.4,710/- per Are, thus totalling to Rs.5,440/- per Are. The property acquired is the middle portion of a larger extent having 1 acre 35 cents. By the acquisition of the small extent, the balance larger extent owned by the claimants is divided into two; one portion having 45.726 cents on the norther side and 85.5 cents on the southern side. According to the claimants, the access to the

northern portion is completely blocked by the acquisition and therefore, considerable damage has been caused to the said land due to injurious affection.

2. We have noticed that the claimant has taken out a Commission to report the damages caused to the northern portion of the larger extent. The Commissioner has reported that the damage at modest estimate will come to 60%.

3. The court below relied on Ext.A1 judgment produced by the claimant for fixing the land value of the property. The court below, taking into account the potentialities of the land under reference, proximity to Nooranadu junction, the adjacent lie of the K.P. road and the time lag in between the notifications, fixed the land value at 110% of the land value refixed in Ext.A1, which will come to Rs.5,434/-, rounding to Rs.5,440/-. We have gone through the Commissioner's report and noticed the fact that the acquired land is lying at a distance of 25 meters from Nooranad junction, facing Kayamkulam-Punalur road. The Commissioner also reported that cinema theatre, commercial institutions, shops etc. are situated adjacent to the property belonging to the claimants. He had also reported that within a radius of 50 meters, public market, banks, police

station and other Government institutions are located. As AW1, the 'C' claimant gave evidence stating that the acquired land and Ext.A1 land are not at all comparable and that Ext.A1 property lies at ½ furlong away from the acquired land, and is not facing any public road. This testimony of the 'C' claimant stands unchallenged. In the circumstances, considering the locational importance of the acquired land and the further fact that Ext.A1 land is not so important as that of the acquired land, we are of the view that the proper market value for the acquired land shall be 125%, as against 110% fixed by the court below. Regarding the compensation for injurious affection, on the basis of the Commissioner's report and the evidence of AW1, we are of the view that the proper compensation should have been 50% of the land value fixed for the unacquired land. Since the unacquired land is larger in extent (45 & odd cents) compared to acquired land (3.35 Ares), we fix the land value for the unacquired land at Rs.4,000/- per cent. In the above circumstances, the claimants are entitled to 50% of the land value (50% of Rs.4,000/- per cent) for 45.726 cents lying on the northern side of the acquired property, which was separated and lost road access. Since the claim is limited to Rs.2 lakhs as valuation in the appeal, we

further make it clear that in any case, the total claim shall not exceed Rs.2 lakhs. The claimants are also entitled to the statutory benefits, including interest on solatium.

KURIAN JOSEPH, JUDGE.

HARUN-UL-RASHID, JUDGE.

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KURIAN JOSEPH &

HARUN-UL-RASHID, JJ

L.A.A. NO.671 OF 2001

J U D G M E N T

Dated 11th October, 2007.